

# COVINGTON & BURLING

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October 8, 2004

## VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: Oral Ex Parte Communication, CC Docket No. 99-273

Dear Ms. Dortch:

This letter is being filed to notify you that on October 7, 2004, Lois Pines, Regulatory Counsel of InfoNXX, Inc., and the undersigned, its counsel, met with Tom Navin, Bill Dever, and Rodney McDonald of the Wireline Competition Bureau. We discussed issues relating to the pending petition for reconsideration in the above-referenced proceeding (as described in the attached presentation distributed at the meeting) and urged prompt Commission action on that matter. We also discussed briefly the issue of retail directory assistance (DA) competition, including recent filings on that issue and the NARUC Resolution and consumer group filings endorsing DA competition.

If you have any questions, please contact the undersigned.

Sincerely,



Mary Newcomer Williams  
*Counsel to InfoNXX, Inc.*

Attachment

cc: Mr. Thomas Navin  
Mr. William Dever  
Mr. Rodney McDonald

# FCC DA Proceeding Petitions for Reconsideration

InfoNXX, Inc.  
October 7, 2004

# FCC DA Proceeding

## Who Is InfoNXX?

InfoNXX, a privately-held company founded in 1992 and headquartered in Bethlehem, PA, has emerged as the largest global independent directory assistance service provider.

U.S. wholesale competitive DA provider serves wireless carriers and competitive local exchange carriers. Services include free “call completion” connecting the caller to the requested number, movie listings, restaurant reservations, driving directions and other “enhanced” information services.

U.K. subsidiary – The Number UK – offers enhanced, high-quality services and leads the UK directory enquiries market, which was opened to competition in August 2003.

Committed to innovative service offerings and high quality customer service, including use of live operators.

## FCC DA Proceeding

### Pending Petition for Reconsideration

- SBC/BellSouth seek right to impose “reasonable restrictions” on competitive DA providers’ use of DA listings, including prohibiting resale of listings and prohibiting use of listings for specified purposes.

# FCC DA Proceeding

## **INFONXX Position on Recon Petitions**

- Statute/rules contain no restrictions on how competitive DA providers can use DA information obtained under § 251(b)(3)
- States can set any necessary use restrictions and apply them to all DA providers, including LECs
  - Bulk resale of DA listings facilitates competition by driving DA listing prices toward costs
- Competitive DA providers should have access to subscriber information for non-listed or non-published numbers to the same extent as -- and to provide the same non-published number services as -- the LECs

# FCC DA Proceeding

## **Anticompetitive Effect of Use Restrictions**

- Unilateral use restrictions, if permitted, could be imposed by LECs to prohibit – or charge higher prices for – use of DA listings in connection with value-added DA services such as driving directions, category searches, restaurant reviews & reservations, movie listings, showtimes & reviews, and call completion
- Such restrictions would make it impossible for competitive DA providers to offer consumer-friendly, enhanced DA services (at a competitive price or at all)
  - Sample restrictions proposed by LECs (e.g., for telemarketing or directory publishing) are already prohibited by federal and/or state rules or could be prohibited by regulators to the extent justified by the potential harm to consumers; the authority to impose such restrictions should not be assigned to LECs who inevitably will be motivated more by business than consumer interests

# FCC DA Proceeding

## Benefits of Resale of DA Listings

- Resale of DA listings in competition with LECs (who otherwise control DA listings databases solely by virtue of their control over the local exchange market) will help to drive LECs' DA listings prices closer to costs (with minimal regulatory involvement)
  - State cost studies have shown that the LECs' current DA listing rates (\$.02-.07 per listing) are well above costs (which generally are less than \$.01 per listing)
- Availability of resold DA listings insulates competitive DA providers against any LECs' discriminatory, usage-based differential pricing for DA listings
- Allowing LECs to prohibit resale would preserve LEC dominance in the DA market and give LECs undue control over the development and pricing of competitive products and services using DA listings.

(Source: WorldCom d/b/a MCI *ex parte*, March 30, 2004)

# FCC DA Proceeding

## **Recommended Decision on Petitions for Reconsideration**

- Affirm competitive DA providers' right to access unlisted and nonpublished subscriber information to the same extent LECs make such information available to their own operators (or supervisors)
- Prohibit LECs from imposing unilateral restrictions on use of DA information.
- Affirm authority of state regulators to impose use restrictions that serve the public interest, apply equally to both LECs and competitive providers, and preserve the right of DA providers to use DA listing information for DA-related information services.